

No. 13876

United States
Court of Appeals
for the Ninth Circuit.

In the Matter of:
The Imprisonment of FRANK J. KELLNER,
FRANK J. KELLNER,
Appellant.

Transcript of Record

Appeal from the District Court
for the Territory of Alaska,
Third Division

FILED

AUG 6 - 1953

PAUL P. O'BRIEN



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The Imprisonment of FRANK J. KELLNER,
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Appellant.

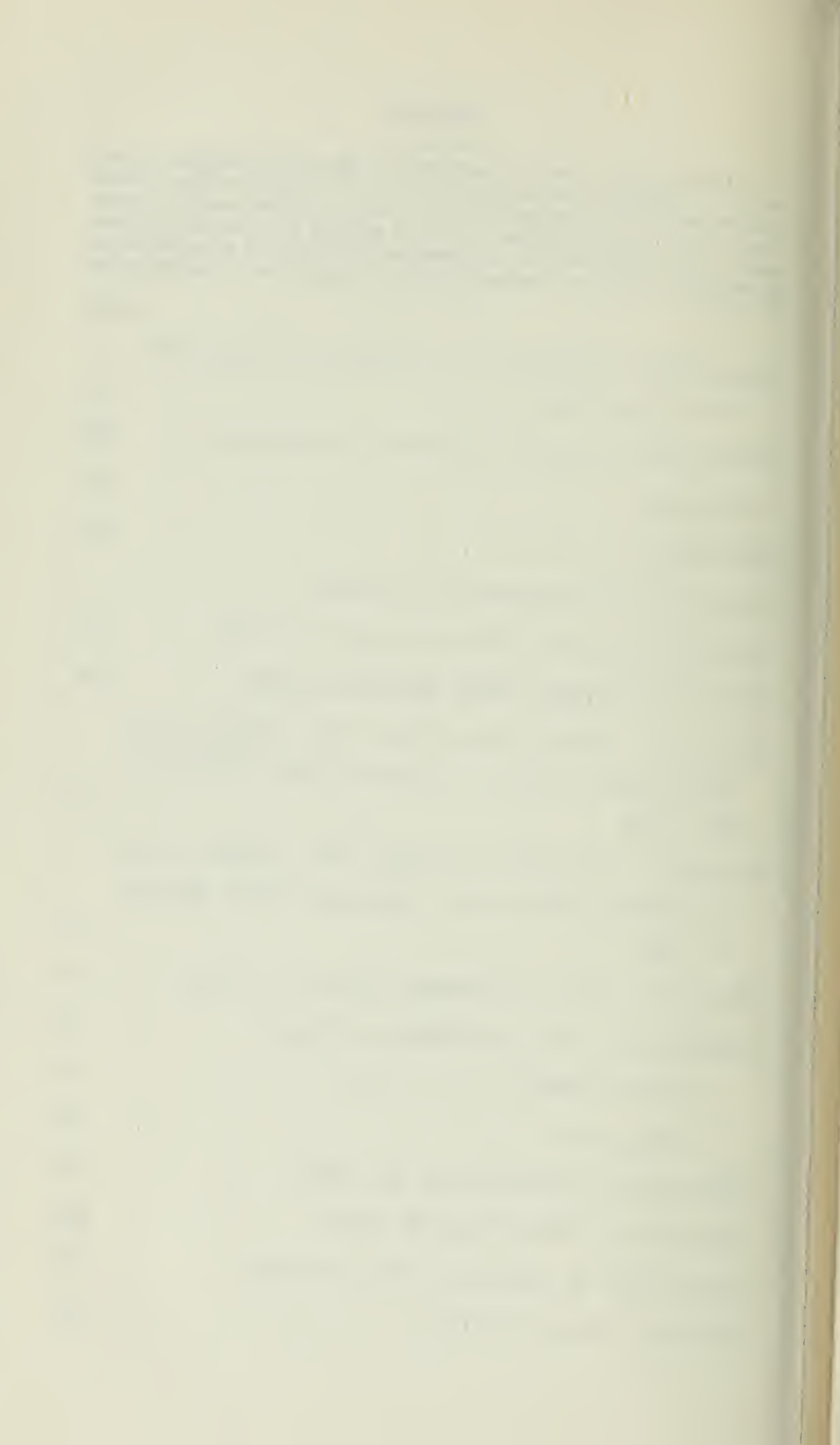
Transcript of Record

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for the Territory of Alaska,
Third Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

JOHN D. SHAW,

Anchorage, Alaska,

Attorney for Petitioner.

J. EARL COOPER,

United States Attorney,

Anchorage, Alaska,

Attorney for the United States.

In
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In the District Court for the Territory of Alaska,
Division Number Three, at Anchorage

No. A-7424

In the Matter of:

The Imprisonment of FRANK J. KELLNER.

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Anthony J. Dimond, Judge of the
District Court of the Third Judicial Division
of the Territory of Alaska:

The Petition of John D. Shaw, on behalf of
Frank J. Kellner, respectfully shows:

I.

That the said Frank J. Kellner is imprisoned and
restrained of his liberty at the Federal Jail in
the City of Seward, Territory of Alaska, by Irwin
Metcalf, Deputy United States Marshal.

II.

That the said Frank J. Kellner is improperly
imprisoned and restrained and not by virtue of the
legal judgment or decree of a competent tribunal
of civil or criminal jurisdiction and not by virtue
of an execution regularly and lawfully issued upon
such judgment or decree.

III.

That the cause or pretense of said imprisonment
and restraint according to the best knowledge and
belief of the petitioner is as follows:

That said Frank J. Kellner was arrested at Ugashik, Alaska, on Saturday, July 28, 1951, by Herbert D. Hoff, Deputy United States Marshal, on complaint by Annie Kellner, wife of the said Frank J. Kellner, charging him, the said Frank J. Kellner, with Assault and Battery, and Drunk and Disorderly Conduct. A copy of the warrant of arrest is attached hereto.

The trial on the aforementioned charges was held at Naknek, Alaska, before United States Commissioner Kathryn Hoff on the following day, viz., Sunday, July 29, 1951, a holiday (A.C.L.A. 1-1-6).

Defendant, the said Frank J. Kellner, pleaded not guilty, was not represented by counsel, and the only witness appearing against him was his wife, the said Annie Kellner.

Whereupon the said Frank J. Kellner was found guilty of the crimes of assault and battery, and drunk and disorderly conduct, and sentenced to jail for 180 days on the first count and 60 days on the second count, a total of 240 days, there being no stipulation that imprisonment on one conviction should commence at the expiration of the imprisonment for the other crime (A.C.L.A. 65-2-7), (A.C.L.A. 65-2-14), (A.C.L.A. 66-16-13), said trial, judgment, sentence and commitment all occurring on Sunday, July 29, 1951.

The said Frank J. Kellner began serving said sentence or sentences, as the case may be, on Sunday, July 29, 1951, in the Federal Jail at Naknek, Alaska; was transferred to the Anchorage Jail on or about October 1st, 1951, and thence to the Fed-

eral Jail at Seward, Alaska. He has been imprisoned at all times under the above-stated sentence or sentences, as the case may be, since Sunday, July 29, 1951. A copy of a certified copy of the order of commitment under which the said United States Marshal, Irwin Metcalf, is presently restraining the said Frank J. Kellner is attached hereto.

The said United States Commissioner, Kathryn Hoff, either through honest mistake or intentionally, as the case may be, caused the said certified copy of the order of commitment to show the date of trial and sentence to be Monday, July 30, 1951, instead of the true date, viz., Sunday, July 29, 1951. The original order of commitment has not been located, but to the best information and belief of petitioner it is locked up with other records of the Court at Naknek, Alaska, and said Court is closed at this season.

IV.

That the said imprisonment and restraint of the said Frank J. Kellner are illegal in this respect: The trial, judgment and sentence occurred on Sunday, a legal holiday, contrary to the law (A.C.L.A. 52-1-6) and by virtue thereof are null and void.

V.

That the legality of the imprisonment and restraint has not been already adjudged upon a prior writ of habeas corpus, to the knowledge or belief of this petitioner.

Wherefore, petitioner prays that a writ of habeas corpus may issue, directed to the said Irwin Met-

calf, commanding him to produce the said Frank J. Kellner, and certify and return therewith the time and cause of his imprisonment and restraint, before the said Court at a time and place therein specified, to do and receive what shall then and there be considered concerning the said Frank J. Kellner; and that he, the said Frank J. Kellner, may be restored to his liberty.

Dated at Anchorage, Alaska, this 26th day of December, 1951.

/s/ JOHN D. SHAW,
Petitioner and Attorney
for Petitioner.

United States of America,
Territory of Alaska—ss.

John D. Shaw, being first duly sworn upon his oath, deposes and says:

That he is the Petitioner above named and the Attorney for Frank J. Kellner; that he has read the foregoing Petition for Writ of Habeas Corpus, knows the contents thereof, and the same is true and correct to the best of his knowledge and as he verily believes.

/s/ JOHN D. SHAW.

Subscribed and sworn to before me this 26th day of December, 1951.

[Seal] /s/ HAROLD J. BUTCHER,
Notary Public in and for
Alaska.

My Commission expires April 21, 1953.

WARRANT
(Misdemeanor)

In the United States Commissioner's Court, Territory of Alaska, Third Division, Koribak Precinct, at Naknek, Alaska.

United States of America,
Territory of Alaska—ss.

The President of the United States of America to the Marshal of the Third Division of the Territory of Alaska, or His Deputy, Greetings:

We Command You to apprehend forthwith Frank Kellner, who is named in a complaint made on oath before me this 28th day of July, A.D. 1951, by Annie Kellner, if he be found in said District, for the crime of Assault and Battery, and Drunk and Disorderly Conduct, as is more particularly set forth in said complaint, and bring him before me to answer said complaint, and be further dealt with as the law directs.

Hereof Fail Not, and make the return of this writ with your doings thereon.

Given under my hand and seal at Naknek, Alaska, this 28th day of July, 1951.

[Seal] /s/ KATHRYN R. HOFF,
United States Commissioner and Ex-Officio Justice
of the Peace.

In the Justice Court for the Kvichak Precinct,
Third Division, Territory of Alaska

UNITED STATES OF AMERICA

vs.

FRANK KELLNER.

COMMITMENT

Violation A.C.L.A., 1949, 65-4-23 and 65-10-3

In the Name of the United States of America, to
the United States Marshal for the Third Division,
Territory of Alaska, or Any Deputy,
Greeting:

An order having this day been made by me, that
he serve 180 days for Assault and Battery and 60
days for Drunk and Disorderly Conduct, you are
therefore commanded to receive him in your custody
and detain him until legally discharged, and
I have admitted him to bail to answer in the sum
of \$.....

Dated at Naknek, Alaska, this 30th day of July,
1951.

/s/ KATHRYN R. HOFF,
U. S. Commissioner and Ex-Officio Justice of the
Peace.

United States of America,
Territory of Alaska,
Third Division—ss.

I Hereby Certify that I received the within Commitment on the 30th day of July, 1951, and executed

the same on the same day by delivering the foregoing named Defendant to the Jailer at the U. S. Jail at Anchorage, Alaska.

IRWIN L. METCALF,
United States Marshal.

/s/ HERBERT D. HOFF,
Deputy Marshal.

Duly verified.

In the Justice's Court for the Precinct of Kvichak
District of Alaska, Third Division
No. 852

UNITED STATES OF AMERICA

vs.

FRANK KELLNER

CERTIFIED COPY OF JUDGMENT

On the 30th day of July, 1951, the above-named defendant, having been brought before me, Kathryn R. Hoff, a Commissioner and ex-officio Justice of the Peace, in a criminal action, for the crime of Assault and Battery and Drunk and Disorderly Conduct, and the said Frank Kellner having thereupon pleaded "not guilty," and been duly tried by Kathryn R. Hoff, and upon such plea duly convicted, I have adjudged that he be imprisoned in the jail at Naknek, Alaska, 240 days: 180 days for Assault and Battery and 60 days for Drunk and Disorderly.

/s/ KATHRYN R. HOFF,
Commissioner and Ex-Officio
Justice of the Peace.

United States of America,
Territory of Alaska—ss.

I, Kathryn R. Hoff, Commissioner and ex-officio Justice of the Peace, hereby certify the foregoing to be a full, true and correct Copy of the Judgment entered in the above-entitled action.

In Witness Whereof: I have hereunto set my hand and affixed the seal of said Court at Naknek, Alaska, this 30th day of July, 1951.

/s/ KATHRYN R. HOFF,
Commissioner and Ex-Officio
Justice of the Peace.

I hereby certify the above is a true and correct copy of the Certified Copy of Judgment made by me when United States Commissioner.

/s/ KATHRYN R. HOFF.

Duly verified.

[Endorsed]: Filed December 26, 1951.

In the District Court for the Territory of Alaska
Division Number Three at Anchorage

No. A-7424

In the Matter of
The Imprisonment of Frank J. Kellner.

ORDER FOR WRIT OF HABEAS CORPUS
TO ISSUE

Let a writ of habeas corpus issue in pursuance of the prayer of the within petition, returnable before the District Court, Third Division at Anchorage, Territory of Alaska.

Dated this 26 day of December, 1951.

/s/ ANTHONY J. DIMOND,
Judge of the District Court.

[Endorsed]: Filed December 26, 1951.

Entered December 26, 1951.

[Title of District Court and Cause.]

WRIT OF HABEAS CORPUS

The United States of America to Irwin Metcalf,
Deputy United States Marshal at Seward, Alaska.

You are hereby commanded to produce the person of Frank J. Kellner, by you imprisoned, by whatsoever name he may be called or charged, and certify and return therewith the time and cause of his imprisonment before the Judge of the Dis-

trict Court, Third Division, Territory of Alaska, at Anchorage, Alaska, on the 28th day of December, 1951, at 4:00 p.m. to do and receive what shall then and there be considered concerning the said person imprisoned.

Witness the Honorable Anthony J. Dimond, Judge of the District Court of the Third Division at Anchorage, Territory of Alaska, attested by my hand and seal of said Court this 26th day of December, 1951.

/s/ M. E. S. BRUNELLE,
Clerk of the District Court.

/s/ LOUISE STRAHORN.

Approved 12-26-51.

/s/ ANTHONY J. DIMOND.

Certified true copy.

Return on service of writ attached.

[Endorsed]: Filed December 28, 1951.

[Title of District Court and Cause.]

TRANSCRIPT OF EXCERPT
OF PROCEEDINGS

On Friday, January 11, 1952, in open court at Anchorage, Alaska, the above-entitled matter came on for hearing before the Honorable Anthony J. Dimond, U. S. District Judge, the Government be-

ing represented by the United States Attorney, J. Earl Cooper, the petitioner being represented by John D. Shaw. At that time the following proceedings were had:

The Court: Giving full weight to all of the testimony and evidence offered by the petitioner, I am convinced beyond any doubt that the trial was held on Monday. Now, we have against that, of course, the testimony of the petitioner, who was not an entirely unbiased witness, and we have the testimony of Mr. Shipley, and the fact that Mr. Shipley said that half of Naknek could be brought here to testify that the trial was held on Sunday did more to discredit his evidence in my mind than anything else. It just doesn't make sense. The trial was had on Monday, and the petitioner knows that, if he hasn't just argued himself into the frame of mind where he believes what is most advantageous for him. Therefore, the proceedings are valid; further, the defendant was rightfully convicted after trial. He was convicted under due process. Now, another, and perhaps more difficult question arises as to whether the sentences imposed run consecutively or concurrently. What the able counsel for petitioner says is correct, that if there is any substantial doubt about it, if there is any way two constructions can be made of the language of the judgment, than that construction ought to be adopted which is most favorable to the defendant, and the sentences should run concurrently in this case. However, I think there is no room for

any such construction. In the certified copy of the judgment, which I presume is a true copy, it is written that the defendant be imprisoned in jail at Naknek 240 days. All one count. There is nothing indefinite about it; it does not say 180 days for one count and 60 days for another. It says 240 days, 180 days for Assault and Battery and 60 days for Drunk and Disorderly. Undoubtedly, it was the intention of the magistrate to have the sentences run consecutively and I think it has been said in such plain language that it would be an abuse of discretion for this Court to set it aside. It is true, the word "consecutively" was not used, and the word "successively" was not used, but we don't undertake to find in courts of jurisdiction such as the Justice's Court, a degree of high learning and careful use of technical language that one might rightfully demand in the District Court in a high court of appeals. The judgment stating that the defendant must be imprisoned for 240 days is the judgment of the Court, and if it stopped right there I presume it would be sufficient; but it didn't stop there, but provided just how that would be—180 days upon conviction of Assault and Battery, and 60 days on conviction of having been Drunk and Disorderly. Therefore, the prisoner is remanded to the custody of the Marshal to complete the term of his imprisonment, and his bail will be returned to him, and a written order will be signed if it is a cash bail. That is all.

United States of America,
Territory of Alaska—ss.

I, Mary Keeney, Official Reporter of the above-entitled court, hereby certify:

That the foregoing is a full, true and correct transcript of the excerpt of proceedings in the above-entitled matter taken by me in shorthand in open court at Anchorage, Alaska, on January 11, 1952, and thereafter transcribed by me.

/s/ MARY KEENEY.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant—Frank J. Kellner, Federal Jail, Seward, Alaska.

Appellant's Attorney—John D. Shaw, Anchorage, Alaska.

Appeal from judgment of the District Court for the Territory of Alaska, Third Division, denying petition for Writ of Habeas Corpus.

That on the 11th day of January, 1952, the above-entitled Court rendered its decision denying the petition for Writ of Habeas Corpus of Frank J. Kellner on the grounds that his trial was held on a legal day and that the sentence and commitment was correct and proper and in accordance with the Alaska statutes.

That the said Frank J. Kellner is now confined in the Federal Jail at Seward, Alaska, serving a

sentence of eight months imposed by the United States Commissioner at Naknek, Alaska, on a charge of Disorderly Conduct and Assault and Battery.

I, the above-named appellant, by and through my attorney, John D. Shaw, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated the 14th day of January, 1952.

/s/ JOHN D. SHAW,
Attorney for Frank J.
Kellner, Appellant.

[Endorsed]: Filed January 14, 1952.

[Title of District Court and Cause.]

ORDER TO EXTEND THE TIME FOR FILING
AND DOCKETING RECORD ON APPEAL

This matter having come before the Court on the motion of John D. Shaw, Attorney for Frank J. Kellner, and it appearing that there is good cause for extending time for filing and docketing the record on appeal in the United States Court of Appeals for the Ninth Circuit, it is

Hereby Ordered that the time for extending and docketing the record on appeal in the above-

captioned case be extended from the 23rd day of February, 1952, to and including March 9, 1952.

Done this 20th day of February, 1952.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed February 20, 1952.

Entered February 20, 1952.

[Title of District Court and Cause.]

ORDER TO EXTEND THE TIME FOR FILING
AND DOCKETING RECORD ON APPEAL

This matter having come before the Court on the motion of John D. Shaw, Attorney for Frank J. Kellner, and it appearing that there is good cause for extending time for filing and docketing the record on appeal in the United States Court of Appeals for the Ninth Circuit, it is

Hereby Ordered that the time for extending and docketing the record on appeal in the above-captioned case be extended from the 9th day of March, 1952, to and including March 24, 1952.

Done this 7th day of March, 1952.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed March 7, 1952.

Entered March 7, 1952.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between John D. Shaw, Attorney for appellant in the above-entitled case, and J. Earl Cooper, United States Attorney, the Attorney for the government, that certified copies of the transcript of record be dispensed with and that the original file in the above-entitled case be sent to the Ninth Circuit Court of Appeals for the purpose of appeal in the above-entitled case.

Witness our hands this 19th day of March, 1952.

/s/ JOHN D. SHAW.

/s/ J. EARL COOPER,
United States Attorney.

[Endorsed]: Filed March 19, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, M. E. S. Brunelle, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 11 (1) of the United States Court of Appeals for the Ninth Circuit, as amended, and pursuant to the provisions of Rules 75 (g) (o) of the Federal Rules of Civil Procedure, and pursuant to designation of counsel, I am transmitting herewith the original papers in my office dealing with

the above-entitled action or proceeding, and including specifically the Petition for Writ of Habeas Corpus, Order for Writ to Issue, Writ of Habeas Corpus, Transcript of Oral Decision of the Court, Notice of Appeal, Order to Extend Time for Filing and Docketing Record on Appeal, Second Order to Extend Time for Filing and Docketing Record on Appeal, Stipulation and Designation of Record.

[Seal] /s/ M. E. S. BRUNELLE,
Clerk of the District Court for the Territory of
Alaska, Third Division.

[Endorsed]: No. 13309. United States Court of Appeals for the Ninth Circuit. In the Matter of the Petition of Frank J. Kellner, for a Writ of Habeas Corpus, Frank J. Kellner, Appellant. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed March 21, 1952.

 /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13309

In the Matter of:

THE PETITION OF FRANK J. KELLNER,
FOR A WRIT OF HABEAS CORPUS

APPELLANT'S STATEMENT OF POINTS ON
WHICH HE INTENDS TO RELY

For the purposes of this appeal, appellant intends to proceed on the bare question of law involved only, i.e.:

(1) Is it within the jurisdiction of, and does a United States Commissioner and ex-officio Justice of the Peace in Alaska have the authority to impose successive or consecutive sentences?

(2) Do two or more sentences, on separate charges, imposed simultaneously by a United States Commissioner and ex-officio Justice of the Peace in Alaska, run concurrently in the absence of specification as to which of said sentences is to be first served?

(3) If the Honorable Court should answer (1) and (2) above in the affirmative, then was a proper specification made of the order in which the sentences were to be served in the case at bar?

/s/ JOHN D. SHAW,

Attorney for Appellant.

Affidavit of Service attached.

[Endorsed]: Filed March 28, 1952.

In the District Court for the Territory of Alaska
Division Number Three at Anchorage

No. 7424

In the Matter of:

The Imprisonment of FRANK J. KELLNER.

JUDGMENT

This matter having come on for hearing before the District Court for the District of Alaska, Division Number Three at Anchorage, Honorable Anthony J. Dimond, District Judge, the petitioner being represented by John D. Shaw, Esquire, and the United States of America being represented by J. Earl Cooper, Esquire, United States Attorney. The Court hearing the evidence of the petitioner and his witnesses and the witnesses for the government, and having received into evidence the records of the United States Commissioner for the Naknek Precinct, Third Division, Territory of Alaska, and having heard the arguments of counsel, respectively, and being fully advised in the matter, doth hereby:

Order, Adjudge and Decree that the petitioner, Frank J. Kellner, was regularly and lawfully convicted after trial in the United States Commissioners Court for the Naknek Precinct, Third Division, Territory of Alaska on the charge of Assault and Battery and Drunk and Disorderly; that said trial was held on Monday, July 30, 1951, a legal day and that the sentence of the Court was for 280 days, a

legal sentence under the laws of the Territory of Alaska, and a sentence within the jurisdiction of the United States Commissioner and Ex-officio Justice of the Peace for the Naknek Precinct, and it is further:

Ordered, Adjudged and Decreed that the petitioner, Frank J. Kellner be remanded to the custody of the United States Marshal to serve out the remainder of said sentence.

Done and ordered entered at Anchorage, Alaska, March 3rd, 1953.

/s/ ANTHONY J. DIMOND,
District Judge.

[Endorsed]: Filed and entered March 3, 1953.

United States Court of Appeals
for the Ninth Circuit

No. 13309

In the Matter of:

FRANK J. KELLNER, etc.

United States of America, ss:

MANDATE

The President of the United States of America.
To the Honorable, the Judges of the District Court
for the Territory of Alaska, Third Division
Greeting:

Whereas, lately in the District Court for the

Territory of Alaska, Third Division, before you or some of you, the Matter of Frank J. Kellner, No. AO7424, an Order was entered on the 11th day of January, 1952; which said Order is of record in said matter in the office of the clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof,

And Whereas, the said Frank J. Kellner, appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and provided, fully and at large appears.

And Whereas, on the 22nd day of January, in the year of our Lord, one thousand nine hundred and fifty-three, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this court that the appeal in this cause be, and hereby is dismissed, February 3, 1953.

You, Therefore, are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Fred M. Vinson, Chief Justice of the United States, the ninth day of March in the year of our Lord one thousand nine hundred and fifty-three.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk, United States Court of Appeals for the
Ninth Circuit.

Entered March 27, 1953.

[Endorsed]: Filed March 31, 1953.

In the District Court for the Territory of Alaska
Division Number Three at Anchorage

No. A-7424

In the Matter of:

The Petition of FRANK J. KELLNER, for a Writ
of Habeas Corpus.

NOTICE OF APPEAL

Notice is hereby given that the petitioner in the above-entitled cause does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment stated herein below.

This is an appeal from the judgment of the District Court for the Territory of Alaska, Third Division, denying petition for Writ of Habeas Corpus.

On the 11th day of January, 1952, the above-entitled court rendered its decision denying the

petition for Writ of Habeas Corpus of Frank J. Kellner, said court finding that petitioners trial before the U. S. Commissioner and Ex-officio Justice of the Peace for the Naknek Precinct was held on a legal day and that the sentence and commitment was correct and proper and in accordance with the Alaska statutes.

On the 3rd day of March, 1953, judgment in the above-entitled cause was entered and filed.

The said Frank J. Kellner is now at liberty on bail.

The above-named appellant by and through his attorney, John D. Shaw, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the above stated judgment.

Dated the 16th day of March, 1953.

/s/ JOHN D. SHAW,

Attorney for Frank J.
Kellner, Appellant.

[Endorsed]: Filed March 16, 1953, D.C.

[Endorsed]: Filed March 19, 1953, U.S.C.A.

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated by and between John D. Shaw, attorney for appellant in the above-entitled case, and Seaborn J. Buckalew, United States at-

torney for the Third Division, District of Alaska, that the record in said case now on file with the United States Court of Appeals for the Ninth Circuit may be considered by said court in connection with the second appeal in said case, and further if said court consents, then the briefs for appellant and appellee now on file may be considered for the purpose of hearing said second appeal.

Dated this 16th day of March, 1953.

/s/ JOHN D. SHAW,
Attorney for Appellant.

SEABORN J. BUCKALEW,
United States Attorney for the Third Division, District of Alaska.

[Endorsed]: Filed May 22, 1953.

[Endorsed]: No. 13876. United States Court of Appeals for the Ninth Circuit. In the Matter of the Imprisonment of Frank J. Kellner, Frank J. Kellner, Appellant. Transcript of Record. Appeal from the United States District Court for the Territory of Alaska, Third Division.

Filed June 17, 1953.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.